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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

VINCE BONATO, Individually and on
 Behalf of All Others Similarly Situated,

Plaintiff,

vs.

YAHOO! INC., CAROL A. BARTZ, and
 JERRY YANG,

Defendants.

) Case No. CV-11-02732 CRB

) **NOTICE OF MOTION AND MOTION**
) **OF THOMAS BURRISS FOR**
) **APPOINTMENT AS LEAD PLAINTIFF**
) **AND APPROVAL OF LEAD**
) **COUNSEL; MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT THEREOF**

) Date: Friday, September 9, 2011

) Time: 10:00 a.m.

) Judge: Charles R. Breyer

) Ctrm: 6

NOTICE OF MOTION

PLEASE TAKE NOTICE, that on September 9, 2011, at 10:00 a.m. or as soon thereafter as the matter can be heard in the courtroom of the Honorable Charles R. Breyer, situated at 450 Golden Gate Avenue, San Francisco, CA 94102, Thomas Burriss will move, and hereby does move, for an order (a) appointing Mr. Burriss as lead plaintiff, and (b) approving Mr. Burriss' selection of Wolf Popper LLP as lead counsel for the Class and Berman DeValerio as liaison counsel.

Movant seeks appointment as lead plaintiff and approval of lead counsel pursuant to the Securities Exchange Act of 1934 ("Exchange Act"), the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995 ("PSLRA"). This Motion is based on this Notice, the attached Memorandum of Points and Authorities, the declaration of Lester L. Levy and the Court's complete files and records in this action, as well as such further argument as the Court may allow at the hearing on this Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

This is a class action brought on behalf of all persons or entities who purchased or otherwise acquired Yahoo! Inc. ("Yahoo" or the "Company") securities on the NASDAQ ("NASDAQ") (the "Class") during the period April 19, 2011 through May 13, 2011, inclusive (the "Class Period"), seeking to pursue remedies under the Exchange Act. Named as defendants are Yahoo and certain of its directors and executive officers.

Defendant Yahoo is a Delaware corporation with its headquarters located in Sunnyvale, California. Yahoo, together with its consolidated subsidiaries, is a premier digital media company that delivers personalized digital content and experiences, across devices and around the globe, to vast audiences.

The Complaint in this action alleges that throughout the Class Period the defendants made false and/or misleading statements and omitted material adverse facts about Alipay, a company partially owned by Yahoo through Yahoo's ownership stake in Alibaba Group Holdings Limited Alibaba. Alibaba is a Chinese equivalent of Ebay and Alipay is a Chinese equivalent of Paypal. Specifically, the Complaint alleges that defendants made false and/or misleading statements and/or omitted, among others, the following material facts: (1) Yahoo management had been informed on

1 March 31, 2011, at the latest, that Alipay's structure had been shifted from Alibaba, reducing the
 2 value of Yahoo's investment in Alibaba by billions of dollars; and (2) Chinese regulations regarding
 3 foreign ownership had been anticipated to change as far back as 2009, which would require Yahoo
 4 or Alibaba to divest themselves of Alipay, but Yahoo had failed to develop a strategy to recover the
 5 value it had in Alibaba. As a result of the above, the Complaint alleges, the Company's securities
 6 traded at artificially inflated prices during the Class Period.

7 Yahoo investors were shocked to learn that Alipay had been transferred to Alibaba's CEO.
 8 According to news reports, Alibaba received only \$46 million for Alipay's assets, which securities
 9 analysts valued at \$5 billion. When the market learned of Alipay's transfer and that Yahoo knew,
 10 but failed to disclose to investors the truth about the transfer, Yahoo's share price fell 15%, from a
 11 class period high of \$18.65 to \$15.81.

12 PROCEDURAL HISTORY

13 On June 6, 2011, Vince Bonato commenced this action, and on that same date counsel for
 14 Mr. Bonato published a notice of the pendency of the case on *Business Wire*, a widely circulated
 15 national business-oriented wire service. See Declaration of Lester L. Levy in Support of Motion of
 16 Thomas Burriss for Appointment as Lead Plaintiff and Approval of Lead Counsel (the "Levy
 17 Declaration") at Exhibit A. The Complaint alleged the facts described above and set forth the legal
 18 basis for plaintiff's claims, specifically Sections 10(b) and 20(a) of the Exchange Act, as amended
 19 by the PSLRA, 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the
 20 Securities and Exchange Commission, 17 C.F.R. 10b-5.

21 Mr. Burriss brings the instant motion for, *inter alia*, appointment as lead plaintiff pursuant
 22 to the Complaint and notice of pendency, and files this Motion prior to the expiration of the 60-day
 23 period from publication of Mr. Bonato's June 6, 2011 notice.

24 ARGUMENT

25 **A. Mr. Burriss Should Be Appointed Lead Plaintiff**

26 Section 21(D)(a)(3)(B) of the PSLRA provides the procedure for selecting a Lead Plaintiff
 27 in class actions brought under the Exchange Act. The PSLRA directs courts to consider any motion
 28 to serve as lead plaintiff filed by class members in response to a published notice of class action by

the later of (i) 60 days after the date of publication of the notice; or (ii) as soon as practicable after the Court decides any pending motion to consolidate. 15 U.S.C. §78u-4(a)(3)(B). The PSLRA provides a “rebuttable presumption” that the most “adequate plaintiff” to serve as lead plaintiff is the person that:

- (aa) has either filed the complaint or made a motion in response to a notice. . . ;
- (bb) in the determination of the Court, has the largest financial interest in the relief sought by the class; and
- (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. §78u-4(a)(3)(B)(iii)(I).

As set forth below, Mr. Burriss satisfies all three criteria, and thus is entitled to the presumption that he is the “most adequate plaintiff.”

1. Mr. Burriss Has Moved To Be Appointed Lead Plaintiff

Mr. Burriss files the instant motion in response to the published notice of this class action and submits herewith his sworn certification attesting that he is a Class member, desires to serve as a representative of the Class, and is willing to provide testimony at deposition and trial, if necessary. *See* Levy Declaration, Exhibit B.

Accordingly, Mr. Burriss satisfies the requirement of making a motion in response to a published notice. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii).

2. Mr. Burriss Has The Largest Financial Interest Submitted By A Plaintiff For The Class

In accordance with the PSLRA, a court shall adopt the rebuttable presumption that “the most adequate plaintiff . . . is the person or group of persons that . . . has the largest financial interest in the relief sought by the class.” 15 U.S.C. §78u-4(a)(3)(B)(iii)(I).

During the Class Period, Mr. Burriss purchased shares of Yahoo stock at a price alleged to be artificially inflated by defendants’ materially false and misleading statements and omissions and, as a result, Mr. Burriss has suffered a loss of \$19,340. *See* Levy Declaration, Exhibit C.

To the best of his knowledge, Mr. Burriss believes that he has the largest known financial interest of any Class member in this case who timely filed an application for appointment as lead

plaintiff, and thus satisfies the largest financial interest requirement to be appointed lead plaintiff for the Class. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(bb).

3. Mr. Burriss Otherwise Satisfies The Requirements Of Rule 23 Of The Federal Rules Of Civil Procedure

Section 21(D)(a)(3)(B)(iii)(I)(cc) of the PSLRA further provides that, in addition to possessing the largest financial interest in the outcome of the litigation, a lead plaintiff must “otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.” Rule 23(a) provides that a party may serve as a class representative if the following four requirements are satisfied:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law and fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interest of the class.

Fed. R. Civ. P. 23(a).

In determining that a lead plaintiff movant satisfies the requirements of Rule 23, the Court need not raise its inquiry to the level required in ruling on a motion for class certification. A *prima facie* showing that a PSLRA movant satisfies the requirements of Rule 23 is sufficient. *In re Cavanaugh*, 306 F.3d 726, 720 (9th Cir. 2002). Consequently, courts limit their inquiry to the typicality and adequacy prongs of Rule 23(a), and defer examination of the remaining requirements until class certification. *Curry v. Hansen Medical, Inc.*, No. 5:09-cv-05094-JF(HRL), 2010 WL 702432, at *2 (N.D. Cal. Feb. 25, 2010) (“Because failure to satisfy prongs (1) or (2) [of Rule 23] would preclude certifying a class in the first instance, [the Court’s assessment of a lead plaintiff motion] focuses on typicality and adequacy”); *City of Harper Woods Employees Retirement System v. AXT, Inc.*, No. 04-04362-MJJ, 2005 WL 318813, at *3 (N.D. Cal. Feb. 7, 2005) (“When a court assesses a lead plaintiff motion, the inquiry should be focused on the typicality and adequacy requirements of Rule 23”). Mr. Burriss satisfies both the typicality and adequacy requirements of Rule 23, thereby justifying his appointment as Lead Plaintiff for the Class.

a. Mr. Burriss’ Claims Are Typical

The Rule 23(a) typicality requirement is satisfied when a plaintiff’s claims arise from the same event, practice or course of conduct that gives rise to other class members’ claims and

1 plaintiff's claims are based on the same legal theory. *See Hanon v. Dataproducts Corp.*, 976 F.2d
2 497, 508 (9th Cir. 1992).

3 Here, Mr. Burriss' claims are typical of the claims asserted by the Class. Mr. Burriss, as do
4 all members of the Class, alleges that defendants violated the Exchange Act by publicly
5 disseminating a series of false and misleading statements concerning Yahoo's Asian assets. Mr.
6 Burriss, as did all members of the Class, purchased Yahoo shares during the Class period at a price
7 artificially inflated by defendants' misrepresentations and omissions, and was damaged thereby.
8 Thus, Mr. Burriss' claims are closely aligned with other Class members', and are, therefore, typical
9 of the other members of the Class.

10 **b. Mr. Burriss Is An Adequate Representative**

11 The Rule 23(a) adequacy of representation requirement is satisfied where it is established a
12 representative party "will fairly and adequately protect the interest of the class."

13 Accordingly:

14 The Ninth Circuit has held that representation is "adequate" when counsel for the
15 class is qualified and competent, the representative's interests are not antagonistic to
the interests of absent class members, and it is unlikely that the action is collusive.

16 *Tanne v. Autobytel, Inc.*, 226 F.R.D. 659, 667 (C.D. Cal. 2005) (citing *In re Northern Dist. Of Cal.*,
17 *Dalkon Shield IUD Prod. Liab. Litig.*, 693 F.2d 847, 855 (9th Cir. 1982)). The class representative
18 must also have "a sufficient interest in the outcome of the case to ensure vigorous advocacy." *Tanne*,
19 226 F.R.D. at 667 (citation omitted).

20 Mr. Burriss has demonstrated his adequacy as the lead plaintiff by evincing a strong desire
21 to prosecute this action on behalf of the Class, and has shown that he is willing and able to take an
22 active role in and control the litigation. Mr. Burriss has communicated with experienced counsel
23 concerning the initiation of this case and has made this Motion to be appointed lead plaintiff. Mr.
24 Burriss is not aware of any antagonism between his interests and those of other Class members.
25 Moreover, Mr. Burriss has sustained substantial financial losses – in the amount of \$19,340 – from
26 his investment in Yahoo securities and is, therefore, motivated to pursue the claims in this action.
27 *See Levy Declaration, Exhibit C.*

4. Mr. Burriss Is Presumptively the Most Adequate Lead Plaintiff

The presumption in favor of appointing Mr. Burriss as lead plaintiff may be rebutted only upon proof “by a purported member of the Plaintiffs’ class” that the presumptively most adequate plaintiff:

- (aa) will not fairly and adequately protect the interest of the class;
- (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

15 U.S.C. §78u-4(a)(3)(B)(iii)(II).

The presumption that Thomas Burriss is the most adequate lead plaintiff is not, therefore, subject to rebuttal. Mr. Burriss believes that he has the largest financial interest in this case among Class members who timely filed motions for appointment as lead plaintiff. Mr. Burriss’ ability to fairly and adequately represent the Class is discussed above. Mr. Burriss is not aware of any unique defenses defendants could raise against him that would render Mr. Burriss inadequate to represent the Class. In addition, as discussed below, Mr. Burriss has selected and retained competent and experienced counsel to represent him and the Class. *See Richardson v. TVIA, Inc.*, No. C0606304RMW, 2007 WL 1129344, at *4-5 (N.D. Cal. April 16, 2007) (“The adequacy requirement is met if there are no conflicts between the representative and class interests and the representative’s attorneys are qualified, experienced, and generally able to conduct the litigation.”). Accordingly, Thomas Burriss should be appointed lead plaintiff for the Class.

B. Mr. Burriss’ Choice of Counsel Should Be Approved

The PSLRA vests authority in the lead plaintiff to select and retain counsel, subject only to approval of the Court. *See* §21D(a)(3)(B)(v) of the Exchange Act. Thus, the Court should not disturb the lead plaintiff’s choice of counsel unless necessary to protect the interests of the plaintiff class. *See Cavanaugh*, 306 F.3d at 733. In the instant case, Mr. Burriss has retained Wolf Popper LLP to pursue this litigation on his behalf. Mr. Burriss has also retained Berman DeValerio as liaison counsel. Wolf Popper LLP possesses extensive experience in securities litigation and has successfully prosecuted numerous securities fraud class actions on behalf of injured investors, as reflected by the firm résumé attached to the Levy Declaration as Exhibit D. Similarly, Berman

DeValerio has an outstanding reputation for prosecuting securities class actions. *See* Levy Declaration, Exhibit E. Thus, the Court may be assured that, by granting Plaintiff's motion, the Class will receive the highest caliber of legal representation.

CONCLUSION

For the foregoing reasons, Mr. Burriss respectfully asks the Court to grant his Motion and enter an Order (a) appointing Thomas Burriss as lead plaintiff, and (b) approving his selection of Wolf Popper LLP as Lead Counsel and Berman DeValerio as Liaison Counsel, and granting such other relief as the Court may deem just and proper.

Dated: August 5, 2011

BERMAN DEVALERIO

By


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